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FM AMEMBASSY KATHMANDU
TO RUEHC/SECSTATE WASHDC IMMEDIATE 8610
INFO RUEHBJ/AMEMBASSY BEIJING PRIORITY 6517
RUEHLM/AMEMBASSY COLOMBO PRIORITY 6841
RUEHKA/AMEMBASSY DHAKA PRIORITY 2135
RUEHIL/AMEMBASSY ISLAMABAD PRIORITY 4880
RUEHLO/AMEMBASSY LONDON PRIORITY 6083
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 2460
RUEHSA/AMEMBASSY PRETORIA PRIORITY 0147
RUEHCI/AMCONSUL KOLKATA PRIORITY 4204
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C O N F I D E N T I A L SECTION 01 OF 02 KATHMANDU 000630

SIPDIS

E.O. 12958: DECL: 06/03/2018

TAGS: [PGOV](#) [MARR](#) [KDEM](#) [NP](#)

SUBJECT: NEPAL: CONSTITUTION AMENDED TO CREATE PRESIDENCY

REF: KATHMANDU 607

Classified By: Ambassador Nancy J. Powell. Reasons 1.4 (b/d)

Summary

11. (C) In the early hours of May 29, after abolishing the monarchy, Nepal's Constituent Assembly adopted a set of amendments to the Interim Constitution to create a President as head of state. It also established a Vice President. The President will have a range of powers that are not merely ceremonial. Most notably, he or she will serve as the supreme commander of the Nepal Army. The President has yet to be appointed, but speculation continues to focus primarily on Prime Minister G.P. Koirala. The Maoists are determined, however, to keep the post themselves.

Constitution Amended To Create Presidency

12. (C) According to Mukunda Sharma, the acting spokesman of the Constituent Assembly (CA), the Assembly passed the Fourth Amendment to the Interim Constitution in the early hours of May 29 after abolishing the monarchy in a separate sitting (reftel). Home Minister Krishna Sitaula had tabled the amendment -- which declared Nepal a republic and established a President as the new head of state -- a few hours earlier on behalf of the Interim Government. The amendment also provided for a Vice President. Sharma informed Emboff May 30 that there was a cursory debate followed by a vote. In the days preceding the session, senior leaders of the Communist Party of Nepal (Maoist) had voiced their opposition publicly to the creation of a President as head of state separate from the Prime Minister. Their strong preference was for an executive President as head of state or, failing that, the continuation of the PM as acting head of state. But the leaders of the three other major parties -- Nepali Congress, the Communist Party of Nepal - United Marxist Leninist (UML) and the Madhesi People's Rights Forum (MPRF) -- were insistent.

Responsibility and Election of the President

13. (SBU) The Fourth Amendment consists of 32 separate

provisions. The role, election and qualifications of the President and Vice President are spelled out in a new Article 4A. The main responsibility of the President is to "protect the constitution and abide by it." He or she is to be elected by the Constituent Assembly (Note: presumably by simple majority) and is to serve until the Assembly promulgates the new constitution. He or she must be qualified to become a member of the Assembly and at least 35. (CA members must be at least 25.) The President can be impeached by a vote of two-thirds of the CA members for a serious violation of the constitution. The election procedures and qualifications for the Vice President are the same as those for the President. A Secretariat will support the work of the President.

Powers of the President

14. (SBU) Most of the provisions consist of the substitution of the President for the Prime Minister as the person with the power of appointment to various constitutional bodies, as well as the person to which resignations and constitutionally mandated annual reports are submitted. In some cases, the President has replaced the Speaker of the Interim Parliament or the cabinet. For example, the Prime Minister will now give his or her oath of office to the President as well as submit his or her resignation to the President versus the Speaker. The President will present the Government's annual policies and programs to the parliament, not the Prime Minister. The President will authenticate legislation and

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shall have the power to issue ordinances. The President, not the Prime Minister, shall appoint the Chief Justice of the Supreme Court, the Auditor General, the Public Service Commission, the Election Commission, the National Human Rights Commission and the Attorney General. On the recommendation of the cabinet, the President shall appoint ambassadors and issue pardons and titles.

National Security Powers

15. (SBU) Article 143 of the Interim Constitution, as amended, gives the President the authority, on the recommendation of the "Council of Ministers" (i.e., the cabinet), to declare a state of emergency, which must be approved within one month by the parliament. Article 144, as amended, designates the President as the supreme commander of the Nepal Army. The President is empowered to appoint the Commander-in-Chief of the Nepal Army -- on the recommendation of the cabinet. He or she is also charged with controlling, managing and mobilizing the Nepal Army on the recommendation of the cabinet.

Potential Candidates

16. (C) No decision has yet been reached by the parties on who will serve as President -- or Vice President. Embassy sources continue to speculate that Prime Minister G.P. Koirala is interested in the top position, but even some senior members of his Nepali Congress (NC) party have said to us recently that he is too old and frail for the job. Finance Minister Ram Sharan Mahat told the Ambassador June 3 that the NC is not insisting on Koirala. Former UML General Secretary M.K. Nepal's name has appeared as a potential compromise, but the UML is believed to be holding out instead for the more powerful Chair of the Constituent Assembly (presumably for former Interim Parliament Speaker Subash Nemwang). Other observers predict that the Vice President will come from the MPRF. Since the adoption of the Fourth Amendment on May 29, the Maoists have publicly demanded that the President must be a Maoist.

Comment

17. (C) The Constituent Assembly is now scheduled to hold its second session on June 5. While it is possible that the major parties will have reached a compromise by then on the formation of a new Maoist-led government and the allocation of the other top constitutional posts, including the President and the Vice President, the indications as of close of business on June 3 were not positive. UML General Secretary Jhalanath Khanal informed the press on June 3, after a meeting with NC leaders at Prime Minister Koirala's residence, that the NC and the UML were sticking to their stance: the Constitution would have to be amended again to make it possible for a simple majority to form and bring down a government before they would support a Maoist government. Mahat told the Ambassador that the parties were stuck on the issues of arms management, integration of the People's Liberation Army, the splitting of the Prime Minister and the President, and the simple majority question. The Maoists were similarly entrenched.

POWELL